



Case 3021/99

APPEAL OF PRISONER

(2)

No. STN. 312/98 Name रामदिल
 Father's name सहेब जगन्नि गोड राम लिंगा धाना लखनपुर जिला सरगुजा (म.प्र.)
 Residence छापा 376/511 मा.प.वि. Age 35 वर्ष
 Sentenced to आज्ञा 6 (छा.वर्ष) वर्ष on 14.9.99
 Under Section _____ by A.S.J. Ambikapur (M.P.)

It is explained to the prisoner that if he states he wishes to be represented by a legal practitioner the appellate Court will not proceed with the case for seven days unless the legal practitioner appears earlier. If the legal practitioner does not appear within seven days he may not be heard at all if the Prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to my legal practitioner who should appear.

- 1 Date of Application for copy of Judgement संलग्न निर्णय प्रति लिपि
- 2 Date on which copy received 14/9/99
- 3 Date on which Appeal sent 11/10/99
- 4 Whether the prisoner wishes to be represented or not. नहीं

No. 2490/81 Name रामदिल अ. सहेब
 Confined in छापा 376/511 Jail बिलासपुर (मध्य प्रदेश)
 No. 234 Dated 11/10/1999

Forwarded to the रजिस्ट्रार अहेमप, माननीय उच्च न्यायालय, जबलपुर (मध्य प्रदेश)
 together with a copy of judgement or order passed in the case for favour of transmission to the proper Appellate court.

1329
 अधीक्षक
 Superintendent
 केन्द्रीय जेल बिलासपुर
 Jail

Date of receipt in _____ Office _____
 Date of receipt of record to accompany the _____
 Memo of Appeal to the Appellate court _____

No. _____ Dated _____ 199 _____
 Forwarded to the _____

of receipt in Appellate court _____

(P.T.O.)

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IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

Criminal Appeal No.3021/99

Ramdil

vs.

State of M.P. (Chhattisgarh)

JUDGMENT

Being aggrieved by the judgment dated 14-9-1999 passed in Sessions Trial No.312/98 by the learned First Addl.Sessions Judge, Ambikapur convicting the appellant under Section 376/511 I.P.C. and sentencing him to undergo rigorous imprisonment for six years, the appellant has filed this appeal.

2. The prosecution case in brief is that on night of 3-9-1998 at about 11.00 p.m. when the prosecutrix was all alone at home the applicant knocked the door, entered in the house, fell the prosecutrix on ground and committed rape upon her. The matter was reported to the police and after completion of the investigation a charge-sheet was filed against the appellant. As the accused denied the commission of offence, he was put to trial.

3. After recording the evidence and hearing the parties, the learned trial court held that the prosecution could not bring ^{home the} guilt punishable under Section 376 I.P.C. but was successful in bringing home the guilt punishable under Section 376/511 I.P.C..

4. Learned counsel for the appellant submits that present appears to be a case of consent and as the said adultery was detected, the prosecutrix made a false report. She also submits that the prosecution could not prove the

case beyond shadow of doubt, therefore^{and} as there are unfolded mysteries in the prosecution case, the benefit should be extended in favour of the petitioner/appellant.

5. On the other hand, learned counsel for the State submits that the statements of the prosecutrix if are seen in their true perspective, it would clearly appear that the accused did enter in the house and made an attempt to commit rape upon the prosecutrix. According to him, the prosecution^{RS} had brought home the guilt and the appeal deserves to be dismissed.

6. P.W. 1 Parmeshwari Bai had clearly stated that after hearing the knock on the door she opened the same, the accused forced his entry in and after felling the prosecutrix on the ground committed rape upon her. She also stated that she raised an alarm but her parents-in-law could not come to the spot because the accused had already bolted ~~the doors~~ the doors of their house. She also stated that she opened the doors of the room of her parents-in-law, who immediately came and saw the accused. These particular facts that the door was opened by her the parents-in-law came up and saw the accused in their own court-yard are ^{supported} ~~submitted~~ by P.W.2 Bhanwar Singh, P.W.3 Nanka Ram and P.W.4 Gulabi Bai.

7. In the cross-examination of P.W.1, P.W.2 and P.W.3, the accused could not bring anything on the record to show that either the witnesses['] were telling lie or were trying to fix the accused. On this material aspect, the prosecutrix is also supported by her husband Bhanwar Singh.

8. The doctor P.W.8 Smt.S.L. Kuzur did examine the

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prosecutrix but was unable to give the report about the commission of rape.

9. On the record nothing has been brought by the applicant/accused to show ~~that~~ and suggest that the prosecutrix is telling lies. The defence of the consent can straight-way be rejected because it is nobody's case that the prosecutrix was seen in the company of the accused and to save her ^{skin} ~~skin~~ she was lodging the false report. On the other hand, it has come on the record that none had seen them and it was the prosecutrix who had opened the bolt ^{to} ~~from~~ the door of her parents-in-law.

10. After giving my anxious considerations to the arguments of the parties and on going through the record, I am unable to hold that the applicant has been wrongly held guilty of the commission of the crime punishable under Section 376/511 I.P.C. .

11. At this stage, learned counsel for the applicant submits that the sentence suffers with the ~~vice~~ of vice of excessiveness because if minimum awardable sentence for commission of an offence under Section 376 IPC is seven years, then six years sentence in a case of an attempt is bad. She has prayed ~~for~~ that as the applicant is in jail since 8-9-1998 and as during the pendency of this appeal the applicant must have earned some remission, the sentence be reduced to the period already undergone by her.

12. On the other hand, learned counsel for the State submits that in case of an attempt, half of the longest ^{awardable under the original offence} and term/can be awarded to the accused, as in a case of Section 376 I.P.C. life imprisonment can be awarded, there is no scope for interference.

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13. After hearing the learned counsel for the parties and considering their rival contentions, and also taking into consideration that minimum awardable sentence⁽¹⁾ for an offence punishable under Section 376/I.P.C. would be seven years, award of six years rigorous imprisonment would be on the higher side. The sentence is reduced to the period of $3\frac{1}{2}$ years.

14. The applicant is in jail. He shall serve out the remaining sentence.

15. The appeal to the extent indicated above is allowed.

16. Let the records alongwith the copy of the judgment be sent to the trial court for certification.

Sd/-
R.S. Garg
Judge

12-1-2001.